

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BOBBIE PRICE,
 Plaintiff(s),

v.

HOA COLLECTIONS, LLC,
 Defendant(s).

Case No.: 2:20-cv-01942-APG-NJK

ORDER

[Docket No. 1]

Plaintiff is proceeding in this action *pro se* and has requested authority under 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1. Plaintiff also submitted a complaint. Docket No. 1-1.

I. In Forma Pauperis Application

Plaintiff has submitted the affidavit required by § 1915(a). Docket No. 1. Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed *in forma pauperis* under § 1915(a) will be granted.

II. Screening Complaint

Upon granting an application to proceed *in forma pauperis*, courts screen the complaint. 28 U.S.C. § 1915(e). Section 1915(e) permits courts to dismiss a case if the action is legally "frivolous or malicious," the complaint fails to state a claim upon which relief may be granted, or the plaintiff seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

1 Rule 12(b)(6)¹ provides for dismissal of a complaint for failure to state a claim upon which
 2 relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See*
 3 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must
 4 provide a short and plain statement of the claim showing that the pleader is entitled to relief.
 5 Fed.R.Civ.P. 8(a)(2); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although
 6 Rule 8 does not require detailed factual allegations, it demands “more than labels and conclusions”
 7 or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662,
 8 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true
 9 all well-pled factual allegations contained in the complaint, but the same requirement does not
 10 apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the elements of a cause of
 11 action, supported only by conclusory allegations, do not suffice. *Id.* at 678. Additionally, where
 12 the claims in the complaint have not crossed the line from conceivable to plausible, the complaint
 13 should be dismissed. *Twombly*, 550 U.S. at 570. Allegations of a *pro se* complaint are held to less
 14 stringent standards than formal pleadings drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342
 15 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se* pleadings is required after
 16 *Twombly* and *Iqbal*). “However, a liberal interpretation of a civil rights complaint may not supply
 17 essential elements of the claim that were not initially pled.” *Ivey v. Bd. of Regents of Univ. of*
 18 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

19 Here, Plaintiff’s allegations fail to state a claim upon which relief can be granted. Plaintiff
 20 alleges that Defendant violated the Fair Debt Collection Practices Act (“FDCPA”). *See* Docket
 21 No. 1-1 at 1. To establish a cause of action under the FDCPA, Plaintiff must allege sufficient facts
 22 to show that she is a “consumer” as defined in the FDCPA; the alleged debt arises out of a
 23 transaction entered for personal purposes; Defendant is a “debt collector” as defined in the
 24 FDCPA; and Defendant violated one of the provisions enumerated in the FDCPA. *Wheeler v.*
 25 *Premiere Credit of North America, LLC*, 80 F. Supp. 3d 1108, 1112 (S.D. Cal. 2015) (citing *Turner*
 26 *v. Cook*, 362 F.3d 1219, 1226–27 (9th Cir. 2004)). While Plaintiff alleges that Defendant sent her

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 28 ¹ Unless otherwise noted, references to “Rules” refer to the Federal Rules of Civil Procedure.

1 a debt-collection letter for a debt that she does not owe, *see* Docket No. 1-1 at 1, Plaintiff does not
 2 allege sufficient facts to show whether the alleged debt arises out of a transaction entered for
 3 personal purposes. Plaintiff also fails to allege what statutory provision Defendant violated. Thus,
 4 Plaintiff has failed to allege sufficient facts to state a claim under the FDCPA.

5 Plaintiff also alleges a claim under the Racketeer Influenced and Corrupt Organizations
 6 Act (“RICO”). *See id.* at 1–2. “The elements of a civil RICO claim are as follows: (1) conduct
 7 (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate acts’)
 8 (5) causing injury to plaintiff’s business or property.” *Living Designs, Inc. v. E.I. Dupont de*
 9 *Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005). In the instant case, Plaintiff alleges that
 10 Defendant, as a corporate entity, unlawfully threatened to take her primary home for profit. *See*
 11 Docket No. 1-1 at 1–2. However, Plaintiff alleges no facts to show a pattern of racketeering
 12 activity. As a result, Plaintiff has failed to allege sufficient facts to state a claim under RICO.

13 **III. Conclusion**

14 Accordingly, **IT IS ORDERED** that:

- 15 1. Plaintiff’s request to proceed *in forma pauperis* is hereby **GRANTED**. Plaintiff
 16 shall not be required to pay the filing fee.
- 17 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of
 18 prepayment of any additional fees or costs or the giving of a security therefor. This
 19 Order granting leave to proceed *in forma pauperis* shall not extend to the issuance
 20 and/or service of subpoenas at government expense.
- 21 3. The Complaint is **DISMISSED** with leave to amend. Plaintiff will have until
 22 **November 30, 2020**, to file an Amended Complaint, if the noted deficiencies can
 23 be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed that
 24 the Court cannot refer to a prior pleading (i.e., the original Complaint) in order to
 25 make the Amended Complaint complete. This is because, as a general rule, an
 26 Amended Complaint supersedes the original Complaint. Local Rule 15-1(a)
 27 requires that an Amended Complaint be complete in itself without reference to any
 28 prior pleading. Once a plaintiff files an Amended Complaint, the original

1 Complaint no longer serves any function in the case. Therefore, in an Amended
2 Complaint, as in an original Complaint, each claim and the involvement of each
3 Defendant must be sufficiently alleged.

4 **4. Failure to comply with this order will result in the recommended dismissal of**
5 **this case.**

6 IT IS SO ORDERED.

7 Dated: October 30, 2020

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10 Nancy J. Koppe
11 United States Magistrate Judge
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